

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building, 4<sup>TH</sup> Floor  
Des Moines, Iowa 50319  
eab.iowa.gov**

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**CHRISTOPHER CLARK**

Claimant

and

**ADVANCE SERVICES INC**

Employer

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**HEARING NUMBER: 22B-UI-25300**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 96.5-1J, 24.26-15

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

Christopher Clark (Claimant) was employed part-time by Advance Services Inc, a temporary employment firm, from October 17, 2017, until his employment ended on August 13, 2021. Claimant's sole assignment was data entry and logistics at Pella Corporation. On August 11, 2021, Advance Services informed Claimant that Claimant's last day would be August 13. During this August 11 call the Claimant requested that he be reassigned in the Des Moines area from the Advance Services office there once his move was completed. Advance Services indicated this would be acceptable. Had Advance Services had an assignment available on August 11 the Claimant would have taken it.

## REASONING AND CONCLUSIONS OF LAW:

Legal Standards: Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code section 96.5(1)“j” provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department, But the individual shall not be disqualified if the department finds that:

j. (1) The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

(2) To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

(3) For purposes of this lettered paragraph:

(a) “Temporary employee” means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) “Temporary employment firm” means a person engaged in the business of employing temporary employees.

The Employer has the burden of proving disqualification under paragraph 96.5(1)(j) except that the compliance with the good cause exception is on the claimant.

Application of Standards: It is the duty of the Board as the ultimate trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The Board, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, as well as the weight to give other evidence, a Board member should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what evidence to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence the Board believes; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). The Board also gives weight to the opinion of the Administrative Law Judge concerning credibility and weight of evidence, particularly where the hearing is in-person, although the Board is not bound by that opinion. Iowa Code §17A.10(3); *Iowa State Fairgrounds Security v. Iowa Civil Rights Commission*, 322 N.W.2d 293, 294 (Iowa 1982). The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence considering the applicable factors listed above, and the Board's collective common sense and experience. We have found credible the Claimant's description of the call from Pella, and his communications with Advance Services. Further where the Claimant's accounts differ from Advance Services, we credit the Claimant. Given this it is clear the Claimant did not quit his assignment. His assignment ended, and Advance Services knew this at the same time that the Claimant did.

The Iowa Supreme Court explained that Code section 96.5(1) "establishes a general rule that 'voluntary quitting' disqualifies an individual from unemployment benefits. However, an individual is not disqualified if the individual 'is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment.' Additionally, an individual is deemed to have voluntarily quit if the individual fails to notify the temporary employment firm of completion of an assignment within three working days (subject to certain qualifications)." *Sladek v. EAB*, 939 N.W.2d 632, 638 (Iowa 2020). The Court summarized this discussion as "the statute contains (1) a rule, (2) an exception to the rule, and (3) an exception to the exception to the rule." *Id.* Leaving an assignment is disqualifying (the rule), but not if the temp worker notifies the temp employer of the ending of the assignment and seeks reassignment (the exception), but benefits are still denied if the notification of the ending does not occur within 3 days (the exception to the exception). Two things must be noted: (1) the seeking of reassignment does not have to be within 3 days, but rather *Sladek* instructs "principles of reasonableness apply", and (2) if there is no leaving of work, either in fact or by operation of law, then there is no statutory requirement to request reassignment.

Only if the Claimant left work would he fall within the rule of disqualification. As we read *Sladek* failure to notify in three days of the ending of an assignment is *deemed* a quit even if the assignment was actually ended by the client. In these cases of a *deemed* quit the failure to notify in three days disqualifies regardless of seeking reassignment later. Only in cases of an actual leaving of the assignment, would we then need to move

to the next step of whether the claimant within a reasonable period of time sought reassignment. But we never get this far because the Claimant did not leave work in the first place. The assignment ended. The credible evidence establishes that the Claimant and Advance Services both knew at the same time that the assignment had ended, and no inference of a quit could arise as a matter of fact, nor could we deem a quit by operation of the statute. In such instances the seeking of reassignment does not come into play *except* that in appropriate cases we may be able to *infer* from an incommunicado claimant that the claimant intended to quit the temporary employer. For example, if the employer requires weekly contact and the claimant goes multiple weeks without contact, it might be possible to infer that the Claimant in fact left work. Or if the temp employer requires that it be updated on changes in contact information, and a Claimant fails to do so and becomes unreachable, this also could support an inference of voluntary leaving. But here, the credible evidence is that during the call when the Claimant and Advance Services learned of the assignment ending, the Claimant also requested reassignment at the Des Moines location, and Advance Services agreed. Under *Sladek* the ending of an assignment by the client in this case is not a disqualifying quit, the evidence supports no inference of a quit, and nor does a quit arise by operation a law. Thus benefits are allowed.

**DECISION:**

The administrative law judge's decision dated February 4, 2022 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was not separated from employment in a manner that would disqualify the Claimant from benefits. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

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James M. Strohman

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Ashley R. Koopmans